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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW ADDISON CRUMP,

Defendant and Appellant.

E046995

(Super.Ct.No. FWV800897)

OPINION

APPEAL from the Superior Court of San Bernardino County. Raymond L. Haight
III, Judge. Affirmed.

Susan L. Ferguson, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Gary W. Schons, Chief Assistant
Attorney General, and Pamela Ratner Sobeck, Daniel Rogers, and Marissa A. Bejarano,
Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Matthew Addison Crump was charged with inflicting corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a), count 1)¹ and false imprisonment (§ 236, count 2). The trial court dismissed count 2 pursuant to section 995. A jury subsequently found defendant guilty of the lesser included offense of committing battery on a person with whom he was in a dating relationship (§ 243, subd. (e)(1)). The court suspended imposition of sentence and placed defendant on probation for three years.

On appeal, defendant contends the trial court erred in instructing the jury that committing battery on a person in a dating relationship was a lesser included offense of inflicting corporal injury on a cohabitant. We disagree and affirm.

FACTUAL BACKGROUND

Defendant and Jennifer McCall (the victim) worked together and entered into a sexual relationship in February 2007. The victim stayed with defendant three to four nights per week and kept a television and backpack containing personal items at his house.

On August 5, 2007, the victim, defendant, and defendant's friend, Tim, were at defendant's home having dinner and drinking beer. Defendant and Tim had a discussion about going to a bar without the victim. When the victim asked why she could not go, defendant became angry and started yelling at her. Tim left, and the victim started to gather her things to leave. Defendant then put his hand on her neck, forced her to the

¹ All further statutory references will be to the Penal Code unless otherwise noted.

floor, and started choking her. When he let her get up, she started walking to the door, and he told her not to call the police. The victim walked down the street to the Jack-in-the-Box and called the police.

Officer David Rayenhartz responded to the call and met the victim. She reported that defendant had choked her. The officer took photographs of her, which depicted splotches on her face, a minor cut on the side of her mouth, and red marks on her neck.

Defendant testified on his behalf at trial. He said he was dating the victim during the summer of 2007. Defendant denied choking her on August 5, 2007.

ANALYSIS

The Trial Court Properly Instructed the Jury that Committing Battery on a Person in a Dating Relationship Was a Lesser Included Offense of Inflicting Corporal Injury on a Cohabitant

Defendant contends the trial court erred when it instructed the jury that section 243, subdivision (e) was a lesser included offense of section 273.5, subdivision (a). We disagree.

A. Standard of Review

“A trial court must instruct on a lesser included offense if substantial evidence exists indicating that the defendant is guilty only of the lesser offense. [Citation.]” (*People v. Manriquez* (2005) 37 Cal.4th 547, 584.) In other words, a trial court has a sua sponte duty to instruct the jury on lesser included offenses, even over the defendant’s objection. (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) On appeal, we employ a

de novo standard of review and independently determine whether an instruction on the lesser included offense should have been given. (*Manriquez, supra*, at p. 584.)

B. *Section 243, Subdivision (e) Is a Lesser Included Offense of Section 273.5, Subdivision (a)*

“Under California law, a lesser offense is necessarily included in a greater offense if either the statutory elements of the greater offense, or the facts actually alleged in the accusatory pleading, include all the elements of the lesser offense, such that the greater cannot be committed without also committing the lesser. [Citations.]” (*People v. Birks* (1998) 19 Cal.4th 108, 117-118 (*Birks*).)

In order to convict a defendant of a violation of section 273.5, subdivision (a), the prosecution must prove: 1) that the defendant willfully inflicted a physical injury on his cohabitant or former cohabitant; and 2) the injury inflicted by the defendant resulted in a traumatic condition. (§ 273.5, subd. (a); CALCRIM No. 840) “[C]ohabiting’ under section 273.5 means an unrelated man and woman living together in a substantial relationship—one manifested, minimally, by permanence and sexual or amorous intimacy.” (*People v. Holifield* (1988) 205 Cal.App.3d 993, 1000); see also CALCRIM No. 840.)

To convict a defendant of a violation of section 243, subdivision (e)(1), the prosecution must prove that 1) the defendant willfully touched the victim in a harmful or offensive manner; and 2) the victim is the person with whom the defendant currently has, or previously had, a dating relationship. (CALCRIM No. 841) The term “dating relationship” means “frequent, intimate associations primarily characterized by the

expectation of affectional or sexual involvement” (*Ibid.*; see also § 243, subd. (f)(10).)

As the court in *People v. Jackson* (2000) 77 Cal.App.4th 574 (*Jackson*) definitively stated, a violation of section 243, subdivision (e)(1) is a lesser included offense of section 273.5. (*Id.* at p. 580; see also, *People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1457 (*Hamlin*).) The statutory elements of the greater offense, corporal injury on a cohabitant (§ 273.5, subd. (a)), include all the elements of the lesser offense, battery on a person in a dating relationship (§ 243, subd. (e)(1)), “such that the greater cannot be committed without also committing the lesser. [Citations.]” (*Birks, supra*, 19 Cal.4th at pp. 117-118, fn. omitted.) In other words, one cannot inflict corporal injury upon a cohabitant or former cohabitant, thereby causing a traumatic condition (§ 273.5, subd. (a)), without also harmfully touching a person with whom the defendant has, or previously had, a dating relationship (§ 243, subd. (e)(1)).

Defendant argues, as he did below, that while section 243, subdivision (e)(1) mandates a dating relationship, section 273.5, subdivision (a) does not. However, we agree with the trial court, which concluded that cohabitation assumes the existence of a dating relationship. As delineated in section 273.5, subdivision (a), one cannot cohabit with another person without having a substantial relationship, which the statute defines in a manner that is nearly identical to the dating relationship defined in section 243, subdivision (f)(10). Both statutes essentially describe the relationships as being characterized by sexual involvement or intimacy. Thus, any person who is cohabitating

with another under section 273.5 is necessarily engaged in a dating relationship with that person.

Defendant also argues that section 243, subdivision (e)(1), the lesser offense, includes an element the greater offense does not, specifically, “dating without living together.” He reasons that since section 243, subdivision (e)(1) includes battery on a person with whom one has a dating relationship, *even when they are not cohabiting*, it cannot be a lesser included offense of section 273.5. Defendant then asserts that he was not put on notice that dating the victim, even if he did not live with her, was an element of the offense. He further argues that each offense contains elements that the other does not, and thus, section 273.5, subdivision (a) and section 243, subdivision (e)(1) are separate offenses.

Defendant’s claims are nonsense. Section 243, subdivision (e)(1) does not contain the element that the defendant and victim must be “dating without living together.” Here, section 243, subdivision (e)(1) only required the prosecution to prove that 1) defendant willfully touched the victim in a harmful or offensive manner; and 2) the victim was the person with whom defendant currently has, or previously had, a dating relationship. (CALCRIM No. 841) It did not require cohabitation, which is essentially why it was a lesser included offense of section 273.5, subdivision (a). Again, a lesser offense is necessarily included in a greater offense if the statutory elements of the greater offense “include all the elements of the lesser offense, such that the greater cannot be committed without also committing the lesser. [Citations.]” (*Birks, supra*, 19 Cal.4th at pp. 117-118, fn. omitted.) Since one cannot commit a violation of section 273.5, subdivision (a)

without committing a violation of section 243, subdivision (e)(1), committing battery on a person in a dating relationship is a lesser included offense of inflicting corporal injury on a cohabitant. (See, *Jackson, supra*, 77 Cal.App.4th at p. 580, and *Hamlin, supra*, 170 Cal.App.4th at p. 1457.)

Moreover, as defendant concedes, the primary defense was that the victim was only his girlfriend, not his cohabitant. Thus, defendant was trying to show they were dating but not living together. The jury apparently believed the argument, and thus, convicted defendant of the lesser included offense.

In his reply brief, defendant then contends, “Whether or not the definition of ‘cohabitation’ subsumes a dating relationship is irrelevant.” He again argues that section 243, subdivision (e)(1) is not a lesser included offense of section 273.5 because it contains other elements that section 273.5 does not. He points out that section 243, subdivision (e)(1) applies “not only to those who are merely dating but never lived together, but also to those who were formerly dating, or engaged, or formerly engaged.” Defendant asserts that “[s]ection 273.5, subdivision (a) does not include any of those elements, therefore it cannot be the greater offense.” However, section 243, subdivision (e)(1) lists the elements pointed out by defendant in the disjunctive, since not every element of the statute applies in every case. The elements of section 243, subdivision (e)(1) that applied to the facts of this case included whether a battery was committed against “a person with whom the defendant currently has, or has previously had, a dating . . . relationship.” (§ 243, subd. (e)(1).) The jury was instructed accordingly.

(CALCRIM No. 841) As discussed above, the elements of section 273.5 included all the elements of section 243, subdivision (e)(1), as they applied to this case.

In sum, the court properly instructed the jury that committing battery on a person in a dating relationship was a lesser included offense of inflicting corporal injury on a cohabitant.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

MILLER

J.